

Department of the Navy, DoD

§ 720.45

level for decisions to deny the request for return.

(b) The Commandant of the Marine Corps (CMC) for requests involving Marine Corps members and their family members who are not employees. The CMC may delegate this authority within his headquarters, not below the 0-6 level for routine matters and no lower than the general officer level for decisions to deny the request for return.

(c) The local commanding officer or officer in charge for requests involving employees and their family members who are not active duty military members.

(d) The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) for requests not covered by §§ 720.44 (a) through (c).

§ 720.45 Procedures.

(a) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the respondent returning to the United States:

(1) For members: The responsible official shall direct the commanding officer or officer in charge to order the member to return to the United States. Failure to comply will normally be the basis for disciplinary action against the member.

(2) For employees, military and civilian family members: The responsible official shall strongly encourage the respondent to comply. Failure to comply may subject employees to adverse action, to include removal from the Federal service, and subject military and civilian family members to withdrawal of command sponsorship.

(b) For all other requests when the matter cannot be resolved with the court without returning the respondent to the United States, the responsible official shall take the action described in this instruction when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(c) When a member's return is inconsistent with mission requirements, the provisions of applicable international

agreements, or ongoing DoD investigations and courts-martial, the Department of the Navy will ask DoD to approve denial of the request for the military members's return. To initiate this action, there must be an affirmative showing of articulable harm to the unit's mission or violation of an international agreement.

(d) When a responsible official has determined a request for return is apparently based on an order issued by a court of competent jurisdiction, the responsible official shall complete action on the request for return within 30 days of receipt of the request for return by the responsible official, unless a delay is authorized by the ASN(M&RA).

(e) When a delay to complete the action is warranted, the ASN(M&RA) will grant a 45 day delay, and provide a copy of that approval to the Assistant Secretary of Defense (Force Management & Personnel (ASD(FM&P))) and the General Counsel, DoD. The 45 day period begins upon request by the responsible official of the request for return. Conditions which, when accompanied by full supporting justification, will warrant the granting of the 45 day delay are:

(1) Efforts are in progress to resolve the matter to the satisfaction of the court without the respondent's return to the United States.

(2) To provide sufficient time for the respondent to provide evidence to show legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) To provide commanding officers an opportunity to detail the specific effect on command mission and operational readiness anticipated from the loss of the member or Department of the Navy employee, and to present facts relating to any international agreement, or ongoing DoD investigation or courts-martial.

(f) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee not of his/her command will forward the request to the appropriate commanding officer or officer in charge,

copy to the responsible official, and advise both of them by message that a request for return or other action has been forwarded to them.

(g) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee of his/her command will:

(1) Notify the respondent of the right to provide evidence to show legal efforts to resist the request, or to show legitimate cause for noncompliance for inclusion in the submission to the responsible official.

(2) For members and their family members who are not employees, forward the request immediately to the appropriate responsible official, together with:

(i) Any information the individual desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(ii) Facts detailing the specific impacts on command missions and readiness anticipated from loss of the member.

(iii) Facts relating to any international agreements or ongoing DoD investigations or courts-martial involving the respondent.

(iv) Information regarding conditions expected to interfere with a member's return to the command after completion of proceedings. If, in the opinion of the commanding officer, there are compelling reasons for the member to be returned to the United States PCS, provide full justification to support that recommendation to the cognizant officer.

(3) If a delay in processing is warranted under § 720.42 or § 720.45(e), make a recommendation with supporting justification to the responsible official.

(4) Monitor, and update as necessary, information provided to the responsible official.

(h) The responsible official shall:

(1) Determine whether the request is based on an order issued by a court of apparent competent jurisdiction and if so, complete action on the request no later than 30 days after its receipt by the responsible official. If a conflict of law issue is presented between competing state interests, or between a

state and a foreign host-nation, or between two different foreign nations, the matter shall be referred to the ASN(M&RA) on the first issue and to the Judge Advocate General (Code 10) on the second and third issues.

(2) Encourage the respondent to attempt to resolve the matter to the satisfaction of the court or other requesting authority without return of or other action affecting the member, employee, or family member.

(3) When a delay to complete action under this section is warranted, request the delay from ASN(M&RA) with full supporting justification.

(4) Examine all information the respondent desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(5) Requests for exception from the requirements of this instruction shall be submitted, with supporting justification, to the ASN(M&RA) for submission to the ASD(FM&P).

(6) If a member will be ordered to return to the United States, determine if the member will be ordered TAD or PCS and advise the member's commanding officer of the determination.

(7) If a member will be ordered to return to an appropriate port of entry to comply with a request, ensure:

(i) The requesting officer has given official notification to the responsible official that the requesting official or other appropriate party will initiate action with the receiving jurisdiction to secure the member's delivery/extradition, as appropriate, per chapter 6 of the Manual of the Judge Advocate General, and provide for all costs incident thereto, including any escort if desired.

(ii) If applicable, the necessary accounting data are provided to the commanding officer of the member or orders are issued.

(iii) The member has arranged satisfactory foster care for any lawful minor dependents who will be left unaccompanied overseas upon the member's return to the United States.

(8) Notify the requesting official at least 10 days before the member's return to the selected port of entry.

(9) In the case of an employee or of a family member, the commanding officer or officer in charge of the activity

to which the family member's sponsor is attached, or by which the employee is employed, will carry out the following steps:

(i) An employee shall be strongly encouraged to comply with the court order or other request for return. Failure to comply may be the basis for adverse action to include removal from Federal service. Adverse action should only be taken after coordination with the cognizant civilian personnel office and legal counsel and in compliance with Civilian Personnel Instruction 752.

(ii) If a family member of either a member or an employee is the subject of a request for return, the family member shall be strongly encouraged to comply with the court order. Failure to respond may be the basis for withdrawal of command sponsorship of the family member.

(10) Report promptly to the ASN(M&RA) any actions taken under § 720.45 (a) or (b).

(i) The ASN(M&RA):

(1) May grant delays of up to 45 days from the date of a request for delay in accordance with § 720.45(e).

(2) Will report promptly all delays of requests for the return of members to the ASD(FM&P) and to the General Counsel of the Department of Defense.

(3) Will request from the ASD(FM&P), when warranted, exception to the policies and procedures of DoD Directive 5525.9 of December 27, 1988.

(4) Consolidate and forward reports of action taken under § 720.45 (a) or (b) to the ASD(FM&P) and the General Counsel, DoD as required by DoD Directive 5525.9 of December 27, 1988.

§ 720.46 Overseas screening programs.

The Chief of Naval Operations (CNO) and the CMC shall incorporate procedures requiring members and employees to certify they have legal custody of all minor dependents accompanying them outside the United States into service overseas screening programs.

§ 720.47 Report.

The report requirement in this instruction is exempt from reports control by SECNAVINST 5214.2B.

PARTS 721-722 [RESERVED]

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Sec.

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AUTHORITY: 10 U.S.C. 1034, 1552.

SOURCE: 62 FR 8166, Feb. 24, 1997, unless otherwise noted.

§ 723.1 General provisions.

This part sets up procedures for correction of naval and marine records by the Secretary of the Navy acting through the Board for Correction of Naval Records (BCNR or the Board) to remedy error or injustice. It describes how to apply for correction of naval and marine records and how the BCNR considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552.

§ 723.2 Establishment, function and jurisdiction of the Board.

(a) *Establishment and composition.* Under 10 U.S.C. 1034 and 1552, the Board for Correction of Naval Records is established by the Secretary of the Navy. The Board consists of civilians of the executive part of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary and who shall serve at the pleasure of the Secretary. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as Chair. In the absence or incapacity of the Chair, an Acting Chair chosen by the Executive Director shall act as Chair for all purposes.